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8
9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 KERRY CLEAVENGER and
12 RONNIE ROBERTS, individually
13 and on behalf of all other similarly
14 situated individuals,

15 Plaintiffs,

16 v.

17 LOWE'S COMPANIES, INC. and
18 LOWE'S HOME CENTERS, LLC,

19 Defendants.

NO.

CLASS ACTION COMPLAINT
AND JURY DEMAND

20 Plaintiffs KERRY CLEAVENGER and RONNIE ROBERTS,
21 ("Plaintiffs"), individually and on behalf of all others similarly situated, by and
22 through their attorneys, hereby bring this Class Action Complaint against

1 Defendants LOWE’S COMPANIES, INC. and LOWE’S HOME CENTERS,
2 LLC (“Defendants”), and state as follows:

3 **INTRODUCTION**

4
5 1. This is a class action brought pursuant to the Federal Rules of Civil
6 Procedure Rule 23 (“Rule 23”) by Plaintiffs, individually and on behalf of all
7 similarly situated persons employed by Defendants, arising from Defendants’
8 willful violations of the Washington Minimum Wage Act (“MWA”), Rev. Code
9 Wash. (“RCW”) Ch. 49.46, and the Washington Wage Rebate Act (“WRA”),
10 RCW Ch. 49.52.

11
12 2. Defendants are an American retail company specializing in home
13 improvement. Headquartered in Mooresville, North Carolina,
14 Defendants operate a chain of retail stores in the United States, Canada, and
15 Mexico. As of 2019, Defendants and their related businesses operate more than
16 2,000 home improvement and hardware stores and employ over 245,000 people
17 in North America.

18
19 3. In order to effectively operate their chain of retail stores,
20 Defendants employ non-exempt hourly managers, including Department
21 Managers, Service Managers and Support Managers (hereinafter collectively
22 referred to as “Hourly Managers”), to supervise and oversee the retail stores, or
23

1 various departments within the retail stores, and to manage the retail stores'
2 employees.

3 4. Defendants require their Hourly Managers to work a full-time
4 schedule, plus overtime. However, Defendants do not compensate their Hourly
5 Managers for all hours worked; instead, Defendants require their Hourly
6 Managers to perform compensable work tasks before and after their scheduled
7 shifts and during their unpaid meal periods, when they are not clocked into
8 Defendants' timekeeping system. These policies result in Hourly Managers not
9 being paid for all time worked, including overtime, and not receiving their
10 lawfully mandated meal breaks.
11

12 5. More specifically, Defendants maintain and have maintained a
13 policy and practice of failing to pay Plaintiffs and Hourly Managers for time
14 spent reading and responding to work-related smartphone communications
15 during non-work hours, including during unpaid meal periods, or for being
16 required to report early for work to perform a perimeter check of the premises
17 by slowly driving their vehicles around the outer perimeter of the retail store to
18 ensure that nothing out of the ordinary has occurred overnight. Plaintiffs and
19 Hourly Managers perform other pre- and post-shift work tasks that go
20 uncompensated, such as unlocking and locking the main entrance, arming and
21 disarming the alarm system, and logging into and out of Defendants' computer
22
23

1 system. Plaintiffs and Hourly Managers spend significant time performing this
2 off-the-clock work, but Defendants do not compensate them for it. Because
3 much of this time qualifies as overtime within the meaning of applicable state
4 laws, Plaintiffs and Hourly Managers are owed overtime pay for this
5 uncompensated, off-the-clock work.
6

7 6. The individuals Plaintiffs seek to represent in this action are
8 current and former Hourly Managers who are similarly situated to each other in
9 terms of their positions, job duties, pay structure, and Defendants' violations of
10 state law.
11

12 7. Defendants knew or could have easily determined how long it
13 takes Hourly Managers to complete their off-the-clock work, and Defendants
14 could have properly compensated Plaintiffs and the putative Class for this work,
15 but deliberately chose not to.

16 8. Plaintiffs seek a declaration that their rights, and the rights of the
17 Class members, were violated, an award of unpaid wages and exemplary
18 damages, prejudgment interest, attendant penalties, and an award of attorneys'
19 fees and costs to make them whole for damages they suffered.
20

21 **JURISDICTION**

22 9. This Court has original jurisdiction over this action pursuant to the
23 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). This is a class action

1 in which the aggregate claims of the individual Class members exceed the sum
2 value of \$5,000,000 exclusive of interest and costs, there are believed to be in
3 excess of 100 Class members, and at least some members of the proposed Class
4 have a different citizenship than Defendants.

5
6 10. The Court has supplemental jurisdiction over Plaintiffs' state law
7 claims pursuant to 28 U.S.C. § 1367 because the state law claims and the
8 federal claims are so closely related that they form part of the same case or
9 controversy under Article III of the United States Constitution.

10
11 11. The Court also has diversity jurisdiction over Plaintiffs' claims
12 pursuant to 29 U.S.C. § 1332, as the parties are completely diverse and the
13 amount in controversy exceeds \$75,000.00.

14
15 12. The Court has personal jurisdiction over Defendants because
16 Defendants conduct business within the state of Washington, employ
17 individuals within the state of Washington, and are registered with the
18 Washington Secretary of State.

19
20 13. Personal jurisdiction also applies to Defendants because
21 Defendants have purposefully availed themselves of the privilege of conducting
22 activities in the state of Washington and have established minimum contacts
23 sufficient to confer jurisdiction over them; and the assumption of jurisdiction

1 over Defendants will not offend traditional notions of fair play and substantial
2 justice and is consistent with the Constitutional requirements of due process.

3 **VENUE**

4 14. Venue is proper in the Eastern District of Washington because a
5 substantial portion of the events forming the basis of this suit occurred in the
6 city of Kennewick in Benton County.
7

8 **PARTIES**

9 15. Plaintiff KERRY CLEAVENGER (“Plaintiff Cleavenger”) is a
10 Washington resident who worked as a Loss Prevention Manager at Kennewick
11 Lowe’s, 2N. 1020 Colorado St., Kennewick, Washington (Store #0249) from
12 April 1993 until February 2019. Defendants compensated Plaintiff Cleavenger
13 through the payment of an hourly wage of approximately \$24.65 per hour.
14

15 16. Plaintiff RONNIE ROBERTS (“Plaintiff Roberts”) is a
16 Washington resident who worked as a Department Manager at Lakewood
17 Lowe’s, 515 100th St. S.W. Lake, Lakewood, Washington 98499 (Store #1081)
18 from 2002 until March 2018 and since March 2019. Defendants compensate
19 Plaintiff Roberts through the payment of an hourly wage of \$25.09 per hour.
20

21 17. Defendant LOWE’S COMPANIES, INC. is a North Carolina
22 corporation with a Principal Office at 1000 Lowe’s Blvd, Mooresville, North
23

1 Carolina 28117-8520. Defendant Lowe's Companies, Inc.'s Registered Agent
2 for service of process is Corporation Service Company.

3 18. According to Defendant Lowe's Companies, Inc.'s website, it has
4 35 stores in the State of Washington. Lowes.com, *Washington*, available at
5 <https://www.lowes.com/Lowes-Stores/Washington/WA> (last accessed Feb. 10,
6 2020).
7

8 19. Defendant LOWE'S HOME CENTERS, LLC is a North Carolina
9 limited liability company (SosId: 0087619) with a Principal Office at 1605
10 Curtis Bridge Rd, Wilkesboro, North Carolina 28697-2231. Defendant Lowe's
11 Home Centers, LLC's Registered Agent for service of process is Corporation
12 Service Company.
13

14 20. According to business news website Bloomberg.com, Lowe's
15 Home Centers, LLC retails home improvement, building materials, and home
16 appliances; its address is: 1605 Curtis Bridge Road Wilkesboro, NC 28697
17 United States of America; it was founded on October 13, 1958; and it currently
18 employs 209,850 employees. Bloomberg.com, *Lowe's Home Centers LLC*,
19 available at <https://www.bloomberg.com/profile/company/0579589D:US> (last
20 accessed Feb. 6, 2020).
21

22 21. Upon information and belief, Defendants have employed
23 thousands of Hourly Managers—including Plaintiffs—in the applicable time

1 period to perform services that include supervising and overseeing the retail
2 stores, or various departments within the retail stores, and managing the retail
3 stores' employees.

4 **GENERAL ALLEGATIONS**

5
6 22. Defendants employed Plaintiffs as Hourly Managers in the state of
7 Washington. In that position, Plaintiffs were compensated pursuant to an hourly
8 wage and typically worked a rotating schedule consisting of five to six days and
9 up to 40 or more hours each week, resulting in overtime hours on a weekly
10 basis.

11
12 23. Throughout their employment with Defendants, Plaintiffs were
13 required to work a substantial amount of unpaid time, including overtime, as
14 part of their jobs as Hourly Managers.

15 24. Defendants' Department Managers are responsible for, among
16 other things: (a) opening and closing the retail store; (b) leading and enabling a
17 team of associates to deliver the best possible customer experience in the store
18 by coaching and training associates, managing performance, and ensuring
19 adequate department coverage at all times; (c) assuming responsibility for both
20 customer facing activities (e.g., greeting customers, clarifying needs and
21 identifying solutions, and closing sales) and non-facing activities (e.g., down
22 stocking, inventory management, and area recovery); (d) ensuring his/her area
23

1 of the store is in-stock and customer ready at all times while inspiring engaging,
2 customer-focused behavior and driving his/her team to achieve sales and
3 margin goals; (e) keeping management informed, delegating and following-up
4 on daily tasks, and maintaining a clean, safe and secure work environment; (f)
5 supervising associates in his/her own area; (g) leading associates in other
6 departments, as needed, to meet the demands of the store, which requires broad
7 product knowledge and the ability to engage associates and customers across
8 departments; (h) at times, serving as manager-on-duty (MOD); and (i) moving
9 large, bulky and/or heavy merchandise and performing tasks that may require
10 prolonged standing, sitting, and other activities necessary to perform job duties.
11

12
13 25. Defendants' Service Managers are responsible for, among other
14 things: (a) opening and closing the retail store; (b) enabling and empowering a
15 team of Customer Service Associates ("CSAs") to deliver the best possible
16 customer service experience in the store by assuming responsibility for
17 customer facing activities on the sales floor (e.g., greeting customers, listening
18 and probing to understand needs, and identifying solutions), as well as non-
19 customer facing activities (e.g., down stocking, inventory management and area
20 recovery); (c) ensuring department(s) are customer ready at all times while
21 inspiring engaging, customer-focused behavior, mitigating and reducing
22 customer complaints, and driving positive first impressions for customers upon
23

1 entering the store; (d) coaching, mentoring, training, and continually monitoring
2 CSAs in their assigned areas; (e) leading CSAs in other departments, as needed,
3 to meet the demands of the store, which requires broad product knowledge and
4 the ability to engage employees and customers across departments; and (f)
5 moving large, bulky and/or heavy merchandise and performing tasks that may
6 require prolonged standing, sitting, and other activities necessary to perform job
7 duties.
8

9 26. Defendants' Support Managers are responsible for, among other
10 things: (a) opening and closing the retail store; (b) planning, scheduling,
11 monitoring, and successfully implementing all non-selling operations in the
12 front-end of the store (i.e., cashier and administrative functions); (c) facilitating
13 the store's ability to provide a superior customer shopping experience and
14 maximize sales and profitability by overseeing the Administrative office,
15 researching shortages or overages, depositing cash in the bank, handling
16 register pulls and loans, managing exchange and loaner accounts, and
17 monitoring Customer Service desk activity; (d) planning, scheduling,
18 monitoring, and successfully implementing all non-selling operations in the
19 back-end of the store (during the overnight shift or the Night Ops role); (e)
20 leading a team responsible for critical support processes including receiving and
21 stocking inventory, assembling product, and delivery; (f) training associates,
22
23

1 managing performance, and creating schedules for the team to ensure adequate
2 department coverage at all times; (g) collaborating and communicating with
3 peers on the leadership team to ensure that critical information is being shared
4 and to determine the most effective methods for meeting service objectives and
5 customer needs; and (h) moving large, bulky and/or heavy merchandise and
6 performing tasks that may require prolonged standing, sitting, and other
7 activities necessary to perform job duties.
8

9 27. Defendants require their Hourly Managers to clock in/out for their
10 shifts but do not accurately record the Hourly Managers' compensable work
11 time as required by law.
12

13 **A. The Kronos Timekeeping System**

14 28. All hourly employees—including Hourly Managers—across all of
15 Defendants' retail stores use the computer software program "Kronos" to track
16 their hours worked for purposes of compensation.

17 29. The Kronos timekeeping system, however, fails to properly
18 account for and compensate Hourly Managers for all time worked, including
19 their overtime hours, during each day and during each workweek. This is
20 because Hourly Managers are required to perform compensable work tasks
21 before and after their shifts and outside of the retail store, when they are unable
22
23

1 to log into the Kronos timekeeping system. This policy results in Hourly
2 Managers not being paid for all time worked, including overtime.

3 30. Hourly Managers cannot log into the Kronos timekeeping system
4 (i.e., “punch in” or “punch out”) until they are physically inside the retail store
5 where Defendants’ desktop computer is available. In fact, hourly employees
6 cannot log into the Kronos timekeeping system unless they are ground-
7 connected to Defendants’ internet system, meaning they cannot log into Kronos
8 using Wi-Fi or any other wireless technology, which is to say that hourly
9 employees cannot log into Kronos for purposes of tracking their time unless and
10 until they are physically inside the retail store.
11

12 31. Thus, it is impossible for hourly employees, including Hourly
13 Managers, to log into Kronos before entering a Lowe’s retail store, meaning
14 that Hourly Managers who are responsible for performing any work activities
15 outside of the retail store—such as conducting perimeter checks, unlocking the
16 main entrance, and disarming the alarm system—necessarily perform these
17 activities *before* “punching in” to Kronos, i.e., off the clock. In fact, *all*
18 activities that take place outside of the store location go uncaptured by the
19 Kronos system.
20
21

22 32. Hourly employees are only compensated for the time spent logged
23 into the Kronos timekeeping system, meaning that any time worked “off the
24

1 clock” that is not inputted into Kronos goes unpaid. Hourly Managers have
2 override capability to retroactively adjust other employees’ work hours as
3 recorded in Kronos, but cannot retroactively adjust their own work hours
4 because that feature is blocked within Kronos.

5
6 33. Every Lowe’s retail store has a main entrance that must be locked
7 and unlocked and an alarm system that must be armed and disarmed when the
8 retail store opens and closes each morning and each evening, meaning that
9 certain work activities—namely, opening and closing the retail store itself—
10 necessarily occur at *every* Lowe’s retail store but cannot be captured by the
11 Kronos timekeeping system.

12
13 **B. Pre-Shift Off-the-Clock Work**

14 34. Plaintiffs and the Hourly Managers work a rotating schedule
15 requiring them to work five to six days per week and are required to open the
16 retail store multiple times per week.

17 35. Pursuant to Defendants’ policies, training and direction, Hourly
18 Managers responsible for opening the retail store are required to perform a
19 series of essential work tasks *before* their scheduled shift and *before* clocking
20 into the Kronos timekeeping system. These pre-shift work activities take
21 substantial time, ranging from 10 to 15 minutes per shift, or even longer. Before
22 each shift and before clocking into the Kronos timekeeping system, Hourly
23

Managers responsible for opening the retail store must undertake the following essential work tasks:

- Immediately upon arriving at the retail store, the Hourly Manager must perform a perimeter check of the premises by slowly driving their vehicle around the outer perimeter of the retail store to ensure that nothing out of the ordinary has occurred overnight (such as burglary, vandalism, weather-related damage, or anything else that could pose a safety hazard to employees or customers).¹ If the Hourly Manager spots anything out of the ordinary, they must exit their vehicle to investigate, and, if necessary, extinguish, remove or otherwise eliminate the safety hazard.

- After performing a perimeter check of the retail store's premises, the Hourly Manager must park their vehicle, walk to the main entrance of the retail store, and unlock the entrance using a key.

- After unlocking the main entrance, the Hourly Manager must walk to the alarm system and disarm the alarm by punching in a passcode (the Hourly Manager has one minute to disarm the alarm system before the alarm goes off).

- After disarming the alarm system, the Hourly Manager must walk back to the main entrance to let in any other employees who have arrived for the morning shift so that they can get into the store, stow their personal belongings, and clock in on time.

- Finally, the Hourly Manager must walk to Defendants' desktop computer, turn on/wake up the computer, open Google Chrome or Internet Explorer by clicking the Google Chrome or Internet Explorer icon, search for and log into the Kronos time and attendance software using a username and password, and click "Start Shift."

36. The Hourly Managers are not compensated for this time because they cannot log into the Kronos timekeeping system (i.e., "punch in" or "punch out") until they are physically inside the retail store where Defendants' desktop computer is available.

¹ Hourly Managers must perform a perimeter check of the premises before *each and every shift*, not just the opening shift. This is because Defendants want Hourly Managers to be "aware" of the building and its surroundings before entering the retail store.

1 37. From the time that the Hourly Managers arrive to work and start
2 performing the perimeter check of the premises until the time that they clock
3 into the Kronos timekeeping system takes substantial time, ranging from 10 to
4 15 minutes per shift, or even longer if the Hourly Manager had to exit his or her
5 vehicle to investigate or resolve a safety hazard, meaning that the Hourly
6 Manager who opens the retail store performs a minimum of 10 to 15 minutes of
7 off-the-clock work without compensation.
8

9 38. The unpaid off-the-clock work performed by Plaintiffs and all
10 other Hourly Managers before their shifts directly benefits Defendants, and the
11 tasks undertaken in connection with the off-the-clock work are integral and
12 indispensable to their job duties and responsibilities as Hourly Managers.
13

14 **C. Meal-Period Off-the-Clock Work**

15 39. Defendants promise their Hourly Managers one unpaid 60-minute
16 meal period each shift.

17 40. Under Washington law, in order to deduct an unpaid meal period
18 from an employee's compensable time, an employee must be completely
19 relieved of his or her employment duties for the entire meal break. The relevant
20 administrative code states:
21

22 Employees shall be allowed a meal period of at least thirty minutes
23 which commences no less than two hours nor more than five hours
24 from the beginning of the shift. ***Meal periods shall be on the***

1 *employer's time when the employee is required by the employer*
2 *to remain on duty on the premises or at a prescribed work site in*
3 *the interest of the employer.*

4 Wash. Admin. Code § 296-126-092(1) (emphasis added).

5 41. Because Defendants require Plaintiffs and Hourly Managers to
6 read and respond to work-related smartphone communications during their meal
7 periods, Defendants must compensate them for that time spent working in the
8 Defendants' interest.

9 42. The work performed by Hourly Managers during their unpaid meal
10 breaks takes substantial time, in the range of 5 minutes per shift or more, but
11 Hourly Managers are not paid for this time.

12 **D. Post-Shift Off-the-Clock Work**

13 43. Plaintiffs and the Hourly Managers work a rotating schedule
14 requiring them to work five to six days per week and are required to close the
15 retail store multiple times per week. For security reasons, Hourly Managers
16 typically close the retail store in pairs, as it is rare for Hourly Managers to close
17 the store alone.
18

19 44. Pursuant to Defendants' policies, training and direction, Hourly
20 Managers responsible for closing the retail store are required to perform a series
21 of essential work tasks *after* their scheduled shift and *after* clocking out of the
22 Kronos timekeeping system. After each shift and after clocking out, Hourly
23

1 Managers responsible for closing the retail store must walk to the alarm system
2 and arm the alarm by punching in a passcode. Then, the Hourly Managers must
3 walk to the main entrance, and, subsequent to exiting the store, close the main
4 entrance, lock it using a key, and ensure that the main entrance is securely
5 locked. This post-shift process takes substantial time, in the range of 2 to 3
6 minutes per shift, but can take upwards of 10 to 15 minutes or more if the
7 Hourly Managers encounter security issues while attempting to arm the alarm
8 system.
9

10 45. Oftentimes, when attempting to arm the alarm system, the system
11 will display a warning or error message alerting the Hourly Managers of a
12 security issue, such as a partially open or unlocked door, that needs to be
13 resolved before the system can be properly armed. The Hourly Managers must
14 then walk to the area of the store that is the source of the security issue, resolve
15 the issue, walk back to the main entrance where the alarm system is located,
16 and arm the alarm system.
17

18 46. After arming the alarm system and securely locking the main
19 entrance, it is not unusual for the Hourly Managers to observe unattended
20 shopping carts or flatbeds in the parking lot because the hourly staff responsible
21 for the carts either failed to retrieve them or retrieved them early and then there
22 were late customers bringing carts out. Thus, it is not atypical for Hourly
23

1 Managers to retrieve and collect shopping carts and flatbeds even after having
2 already clocked out and locking the main entrance.

3 47. The unpaid off-the-clock work performed by Plaintiffs and Hourly
4 Managers after their shifts directly benefits Defendants, and the tasks
5 undertaken in connection with the off-the-clock work are integral and
6 indispensable to their job duties and responsibilities as Hourly Managers.
7

8 **E. Off-the-Clock Smartphone Communications**

9 48. In addition to the pre-shift, meal-period, and post-shift off-the-
10 clock work activities described above, Hourly Managers are also required to
11 perform substantial amounts of off-the-clock work when they are off-duty and
12 not at the retail store.
13

14 49. Pursuant to Defendants' policies, training and direction, Hourly
15 Managers are required to read and respond to work-related smartphone
16 communications during non-work hours, including using the WhatsApp
17 Messenger ("WhatsApp"), a free to download messenger application for
18 smartphones. WhatsApp uses the internet to send messages, images, audio or
19 video. The service is very similar to text messaging services, however, because
20 WhatsApp uses the internet to send messages, the cost of using WhatsApp is
21 significantly less than texting. Relevant here, WhatsApp allows users to
22
23

1 communicate with each other in groups of individual users, meaning users can
2 communicate with multiple people at the same time.

3 50. Plaintiff Cleavenger and other Hourly Managers were expressly
4 instructed to download and install WhatsApp onto their smartphones and
5 promptly respond to any work-related messages that are directed to them or that
6 are otherwise within their sphere of responsibility.
7

8 51. Reading and responding to these work-related messages during
9 non-work hours takes substantial time, generally anywhere from 15 to 20 or
10 more minutes per day, but Hourly Managers are not compensated for this time.
11

12 **F. Defendants Benefited from the Uncompensated Off-the-Clock**
13 **Work**

14 52. At all relevant times, Defendants directed and directly benefited
15 from the work performed by Plaintiffs and similarly situated employees in
16 connection with the above-described off-the-clock activities performed by
17 Hourly Managers.

18 53. At all relevant times, Defendants controlled the work schedules,
19 duties, protocols, applications, assignments and employment conditions of their
20 Hourly Managers.

21 54. At all relevant times, Defendants were able to track the amount of
22 time Hourly Managers spent in connection with the off-the-clock activities.
23

1 However, Defendants failed to do so and failed to compensate Hourly
2 Managers for the off-the-clock work they performed.

3 55. At all relevant times, Hourly Managers were non-exempt
4 employees.

5 56. At all relevant times, Defendants used their attendance and
6 adherence policies against the Hourly Managers in order to pressure them into
7 performing the off-the-clock work.
8

9 57. At all relevant times, Defendants' policies and practices deprived
10 Hourly Managers of wages owed for the off-the-clock activities they performed.
11 Because Defendants' Hourly Managers typically worked 40 hours or more in a
12 workweek, Defendants' policies and practices also deprived them of overtime
13 pay.
14

15 58. Defendants knew or should have known that the time spent by
16 Hourly Managers in connection with the off-the-clock activities was
17 compensable under the law. Indeed, in light of Defendants' express instructions
18 to the Hourly Managers that they were required to (a) perform a perimeter
19 check of the premises before entering the retail store and clocking in, and (b)
20 promptly respond to work-related smartphone communications during non-
21 work hours, there is no conceivable way for Defendants to establish that they
22 acted in good faith.
23

1 59. Despite knowing Hourly Managers performed work before and
2 after their scheduled shifts and during their unpaid meal breaks, Defendants
3 failed to make any effort to stop or disallow the off-the-clock work and instead
4 suffered and permitted it to happen.

5
6 60. Unpaid wages related to the off-the-clock work described herein
7 are owed to Hourly Managers at the mandated overtime premium of one and
8 one-half their regular hourly rate because Hourly Managers regularly worked in
9 excess of 40 hours in a workweek.

10 **RULE 23 CLASS ACTION ALLEGATIONS**

11 61. Plaintiffs bring this action pursuant to Fed R. Civ. P. 23(b)(2) and
12 (b)(3) on behalf of the following putative Class (“Rule 23 Class”). The Rule 23
13 Class is defined as follows:
14

15 *All similarly situated current and former Hourly Managers who*
16 *work or have worked for Defendants at any of their retail*
17 *locations in Washington at any time during the applicable*
statutory period.

18 62. Excluded from the Rule 23 Class are Defendants’ exempt
19 executives and administrative and professional employees, including computer
20 professionals and outside sales persons.

21 63. *Numerosity:* The putative Class members from Washington are so
22 numerous that joinder of all members in the case would be impracticable.
23

1 64. *Commonality/Predominance:* There is a well-defined community
2 of interest among Class members and common questions of *both* law and fact
3 predominate in the action over any questions affecting individual members.
4 These common legal and factual questions, include, but are not limited to, the
5 following:
6

- 7 a. Whether the off-the-clock time worked by the Rule 23 Class
8 members in connection with the activities described in this
9 Complaint is compensable hours worked;
- 10 b. Whether the Rule 23 Class members are owed wages for the
11 off-the-clock time worked in connection with the activities
12 described in this Complaint;
- 13 c. Whether Defendants engaged in a policy or practice of failing
14 to pay each Rule 23 Class member regular wages or minimum
15 wage for each non-overtime hour worked;
- 16 d. Whether Defendants engaged in a policy or practice of failing
17 to pay each Rule 23 Class member overtime compensation for
18 each overtime hour worked; and
- 19 e. Whether Defendants should be required to pay compensatory
20 damages, attorneys' fees, penalties, costs, and interest for
21 violating the state laws and wage acts applicable to the
22 members of the Rule 23 Class.

23 65. *Typicality:* Plaintiffs' claims are typical of claims of the Rule 23
24 Class they seek to represent in that Plaintiffs and all other members suffered
25 damages as a direct and proximate result of Defendants' common and systemic
26 payroll policies and practices. Plaintiffs' claims arise from Defendants' similar
policies, practices, and course of conduct as all other Class members' claims
and Plaintiffs' legal theories are based on the same or similar facts.

1 66. *Adequacy:* Plaintiffs will fully and adequately protect the interests
2 of the Rule 23 Class and have retained local and national counsel who are
3 qualified and experienced in the prosecution of nationwide wage and hour class
4 actions. Neither Plaintiffs nor their counsel have interests that are contrary to, or
5 conflicting with, the interests of the Rule 23 Class.
6

7 67. *Superiority:* A class action is superior to other available methods
8 for the fair and efficient adjudication of the controversy, because, *inter alia*, it is
9 economically infeasible for the Rule 23 Class members to prosecute individual
10 actions of their own given the relatively small amount of damages at stake for
11 each individual along with the fear of reprisal by their employer.
12

13 68. This case will be manageable as a Rule 23 Class action. Plaintiffs
14 and their counsel know of no unusual difficulties in this case and Defendants
15 and its corporate clients all have advanced, networked computer and payroll
16 systems that will allow the class, wage, and damages issues in this case to be
17 resolved with relative ease.
18

19 69. Because the elements of Rule 23(b)(3) are satisfied in this case,
20 class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v.*
21 *Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) (“[b]y its terms
22 [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the
23 specified criteria to pursue his claim as a class action”).
24

70. Because Defendants acted and refused to act on grounds that apply generally to the Rule 23 Class and declaratory relief is appropriate in this case with respect to the Rule 23 Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

COUNT I
RULE 23 WASHINGTON CLASS ACTION
VIOLATIONS OF THE WASHINGTON MINIMUM WAGE ACT, REV.
CODE WASH. (RCW) Ch. 49.46

71. Plaintiffs re-allege and incorporate all previous paragraphs herein.

72. At all times relevant to the action, Defendants were employers covered by the overtime and wage mandates of the Washington MWA, and the Rule 23 Washington Class are employees entitled to the MWA protections. *See* Rev. Code Wash. § 49.46.010.

73. The MWA entitles employees to compensation for every hour worked in a workweek.

74. The MWA entitles employees to overtime compensation at a rate equal to one and one-half the amount of their regular rate of pay for all hours worked in excess of 40 hours per week *See* Rev. Code Wash. § 49.46.130.

75. Defendants violated the MWA by regularly and repeatedly failing to compensate the Rule 23 Washington Class for the time spent on the work activities described in this Complaint.

76. As a result, the Rule 23 Class has and will continue to suffer loss of income and other damages. Accordingly, the Rule 23 Class is entitled to recover unpaid wages owed, plus costs and attorneys' fees, and other appropriate relief under the MWA in an amount to be proven at trial.

COUNT II
RULE 23 WASHINGTON CLASS ACTION
VIOLATIONS OF THE WASHINGTON WAGE REBATE ACT, REV.
CODE WASH. (RCW) Ch. 49.52

77. Plaintiffs re-allege and incorporate all previous paragraphs herein.

78. The Washington Wage Rebate Act, Wash. Rev. Code § 49.52.050, provides in relevant part that any employer who “willfully and with intent to deprive the employee of any part of his wage, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance or contract” shall be guilty of a misdemeanor.

79. Wash Rev. Code 49.52.070 provides that any employer who violates the provisions of Wash. Rev. Code 49.52.050 shall be liable in a civil action for twice the amount of wages withheld, and attorneys' fees and costs.

80. Defendants' uniform policy and practice, as described above, was/is willful, intentional, unreasonable, arbitrary, and in bad faith.

1 81. As a result, the Rule 23 Class is entitled to recover double the
2 unpaid wages owed, plus costs and attorneys' fees, and other appropriate relief
3 under the Wage Rebate Act in an amount to be proven at trial.
4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Rule
7 23 Class, request judgment as follows:

- 8 a. Certifying this action as a class action pursuant to Rule 23(b)(2)
 and (b)(3) with respect to Plaintiffs' claims;
- 9 b. Ordering Defendants to disclose in computer format, or in print if
10 no computer readable format is available, the names and addresses
11 of all Rule 23 Class members and permitting Plaintiffs to send
12 notice of this action to all those individuals, including the
13 publishing of notice in a manner that is reasonably calculated to
14 apprise the Class members of their rights by law to opt out of this
15 lawsuit;
- 16 c. Designating Plaintiffs KERRY CLEAVENGER and RONNIE
17 ROBERTS as the representatives of the Rule 23 Class, and
18 undersigned counsel as Class counsel for the same;
- 19 d. Declaring Defendants violated the state wage and hour laws/acts of
20 the state of Washington as cited herein;
- 21 e. Declaring Defendants' violations of the state wage and hour
22 laws/acts were willful;
- 23 f. Granting judgment in favor of Plaintiffs and against Defendants
24 and awarding Plaintiffs and the Rule 23 Class the full amount of
25 damages and exemplary damages available by law;
- 26 g. Awarding reasonable attorneys' fees and costs incurred by
 Plaintiffs in filing this action as provided by statute;
- h. Awarding pre- and post-judgment interest to Plaintiffs on these
 damages; and
- i. Awarding such other and further relief as this Court deems
 appropriate.

1 **JURY DEMAND**

2 Plaintiffs, individually and on behalf of all others similarly situated, by
3 and through their attorneys, hereby demand a trial by jury pursuant to Rule 38
4 of the Federal Rules of Civil Procedure and the court rules and statutes made
5 and provided with respect to the above-entitled cause.
6

7 DATED this 13th day of March, 2020.

8 SCHROETER GOLDMARK & BENDER

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